

**SUPREME COURT OF ARKANSAS**

No. 10-763

TIMOTHY RAMON MOORE  
Appellant

v.

RAY HOBBS  
Appellee

**Opinion Delivered**      October 7, 2010

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF, PETITION FOR WRIT OF  
CERTIORARI, AND MOTION TO  
AMEND PETITION FOR WRIT OF  
CERTIORARI [CIRCUIT COURT  
OF JEFFERSON COUNTY, CV 2010-  
193, HON. JODI RAINES DENNIS,  
JUDGE]

APPEAL DISMISSED; MOTIONS AND  
PETITION MOOT.

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**PER CURIAM**

On March 12, 2010, appellant Timothy Ramon Moore, who is incarcerated in the custody of the Arkansas Department of Correction by virtue of multiple criminal convictions, filed in the circuit court in the county where he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006). The petition was denied, and appellant lodged an appeal here.

Appellant now seeks an extension of time to file his brief-in-chief and a writ of certiorari to correct an error in the record. He has also filed a motion to amend the petition for writ of certiorari.

We need not address the merits of the motions or petition because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and

the motions and petition are moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to state a claim in his petition that was cognizable in a habeas proceeding. The burden is on the petitioner in a habeas corpus petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner who does not allege his actual innocence<sup>1</sup> must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a “showing by affidavit or other evidence, [of] probable cause to believe” that he is illegally detained. *Id.* at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant contended that the judgment in his case was invalid because the trial court permitted an improper amended information to be filed. The original information charged appellant with kidnapping, aggravated robbery, and theft by receiving. The theft-by-receiving

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<sup>1</sup>A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).

charge alleged that appellant had received a firearm owned by Abraham Taylor. The amended information alleged that appellant had committed theft of property by stealing cash and jewelry belonging to Kevin Brooks. (Brooks was also the victim of the kidnapping and aggravated robbery.) Appellant did not challenge the amended information at trial. Appellant contends that the issue is properly raised in a petition for writ of habeas corpus because he was surprised by the change in that the charge made on the eve of trial, denied his common law right to enter a plea to it before trial and that the amended information deprived the court of jurisdiction in the matter. He further argued that his attorney was ineffective for not challenging the amended information.

Appellant offered no authority for the proposition that amending an information deprives a court of jurisdiction to try the accused. We have held the claim is not cognizable in a habeas proceeding. *Hill v. Norris*, 2010 Ark. 287 (per curiam). Even if there was an error at trial in the amended information, the error would not take away the court's personal or subject-matter jurisdiction. *Id.* A court with personal and subject-matter jurisdiction over the defendant in a criminal proceeding has authority to render judgment. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989). If the trial court erred in permitting the information to be amended, appellant's remedy lay in a timely objection in the trial court and appeal of any adverse ruling. If counsel was remiss in representing appellant at trial or on direct appeal for not objecting to trial error, appellant's remedy was a timely claim of ineffective assistance of counsel raised pursuant to our postconviction rule, Arkansas Rule of Criminal Procedure 37.1

Cite as 2010 Ark. 380

(2010). *Hill v. Norris*, 2010 Ark. 287. A claim of ineffective assistance of counsel is not cognizable in a habeas proceeding. *Grimes v. State*, 2010 Ark. 97 (per curiam).

Appeal dismissed; motions and petition moot.